

1 counsel, for their Second Amended Complaint against Tammy Dorset, John
2 Doe 1 through John Doe 10 (collectively the “Dorset defendants”) and
3 Facebook, Inc. (“Facebook”) (collectively “Defendants”), allege as follows
4

5 **JURISDICTION AND VENUE**

6 1. This court has original jurisdiction pursuant to 28 U.S.C. §§ 1332
7 and 1338(a), and supplemental jurisdiction pursuant to 28 U.S.C. §1367, as
8 well as pendant jurisdiction over claims based on state law.

9 2. This court has personal jurisdiction over Defendant Facebook.
10 Facebook’s principal place of business is located in this District. Facebook’s
11 Terms of Service requires that suits by users of its services be brought in
12 this District.

13 3. This court has personal jurisdiction of the Dorset Defendants
14 based on the criminal acts in which they engaged.

15 (a) Those acts were directed at this District and caused injury
16 in this District.

17 (b) On information and belief, Tammy Dorset and the other
18 Dorset Defendants, either individually or through their agent, Tammy
19 Dorset, agreed to the Facebook Terms of Service and to jurisdiction in
20 this District.

1 (c) The Dorset Defendants' conduct caused injury to Plaintiffs
2 and their intellectual property within the State of California.
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4 4. Venue is proper in this district pursuant to 28 U.S. §§ 1331(c)
5 and 1400(a), in that Defendants are subject to personal jurisdiction in this
6 District. Facebook may be found in this District. Facebook's Terms of
7 Service specify this District as the proper forum.
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9 **INTRADISTRICT ASSIGNMENT**
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11 5. Pursuant to Civil L.R. 3-2(c), this matter is an Intellectual
12 Property Action and is subject to district wide assignment, notwithstanding
13 a substantial part of the events giving rise to the cause of action occurred in
14 Alameda County and the City and County of San Francisco, which makes
15 Oakland and/or San Francisco the proper assignment pursuant to Civil L.R.
16 3-2(d).
17

18 **THE PARTIES**
19

20 6. Dr. Long is a board-certified orthopedic surgeon as well as one of
21 the world's leading experts in the practice of yoga. He is a world-renowned
22 author, lecturer, and blogger on the subject of yoga, particularly on the
23 anatomical effects of various yoga poses. Illustrations prepared for him
24 using trade secret processes are unique, identifiable to Plaintiffs,
25 copyrighted, and recognized as authoritative throughout the world. Dr. Long
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27

¹ resides in Panama City Beach, FL. He markets his works through his
² wholly owned corporation, Plaintiff Bandha LLC. Facebook is a publicly
³ traded corporation with its principal office in the State of California.
⁴

5 7. Facebook is one of the largest social networking sites in the
6
7 world, and allows its more than 1 billion individual and business users to
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9 create pages, upload, download, distribute, and buy and sell a variety of
10 audiovisual works, including works that Plaintiffs advertise and market on
11 Facebook.

12 8. Tammy Dorset is the pseudonym for one or a group of computer
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14 hackers. On information and belief, the actions of Defendant Tammy Dorset
15 were taken in conspiracy with Defendants John Does 1-10. On information
16 and belief, the Doe Defendants are a group comprised of multiple
17 individuals operating from different locations at different times to violate
18 Plaintiffs' intellectual property rights and thereby cause injury to Plaintiffs;
19 the Doe Defendants acted through multiple IP addresses at various times,
20 apparently from different locations

INTRODUCTION AND THE FACTUAL BACKGROUND

25 9. This case arises out of the criminal computer hacking,
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27 intentional copyright infringement by the Dorset Defendants who hacked

1 into a Facebook Business page owned by and controlled by the Dr Long,
2 locked Dr. Long out of the administrative control of that page and over Dr.
3 Long's strenuous objections posted Dr. Long's copyrighted material on that
4 page with embedded links to malicious computer software and to pages
5 displaying pornographic images.
6

7 10. Under Article I, Section 8, clause 8, of the Constitution and the
8 Copyright Act enacted by Congress thereunder, Dr. Long, like all owners
9 has the ***exclusive right*** to control the distribution of his copyrighted
10 material. Dr. Long opposed the distribution of his copyrighted material by
11 Dorset. Since the copyrighted material was displayed on the Facebook site,
12 Facebook had the obligation under law to remove material infringing on Dr.
13 Long's copyrights in order for Facebook to avoid liability for copyright
14 infringement.
15

16 11. The competing interests of copyright owners and
17 publishers/distributors of copyrighted material faced new challenges posed
18 by the internet. Congress sought to address those challenges by passing the
19 Digital Millenium Copyright Act of 1998____ (the "DMCA"). Copyright
20 owners, faced the potential for infringing materials to become almost
21 instantly distributed throughout the world. As the Senate Report on the
22 DMCA noted, "[d]ue to the ease with which digital works can be copied and
23

1 distributed worldwide virtually instantaneously, copyright owners will
 2 hesitate to make their works readily available on the Internet without
 3 reasonable assurance that they will be protected against massive piracy.” S.
 4 Rep. No. 105-190, at 8.

5 12. Facebook and other internet service providers (“ISPs”), like
 6 Facebook, do have control over what material is posted on their websites.
 7 But they faced the challenge of policing infringing material that might be
 8 posted on their web sites by third parties over whom Facebook had no
 9 control. The major protection from copyright infringement liability the
 10 DMCA provided to internet service providers was to make clear that there is
 11 *no duty to become aware of infringing material on its web site.* However,
 12 once an internet service provider *becomes actually aware of infringing*
 13 *material on its platform,* it may be liable under long established law for
 14 direct, vicarious or contributory infringement.

15 13. Accordingly, the DMCA established a “safe harbor” for ISPs that
 16 protected them from liability under certain circumstances. 17 U.S.C. § 512
 17 limits the liability of service providers, such as Facebook, for copyright
 18 infringement when the following conditions are met: (1) The provider does
 19 not have actual knowledge of the infringing activity; (2) if the provider has
 20 the right and ability to control the infringing activity, it must not receive a
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1 financial benefit directly attributable to the infringing activity; and (3) upon
2 receiving proper notification of the claimed infringement, the provider must
3 expeditiously take down or block access to the material.

14. The statute also establishes procedures for proper notification.

Under the notice and takedown procedure, a copyright owner submits a

notification to the service provider's designated agent, under penalty of

perjury, including a list of specified elements. *If, upon receiving a proper*

notification, the service provider does not expeditiously remove or block

monetarily liable for the infringement. The statute encourages the ISP to err on the side of removing material. The ISP is shielded from any liability for improperly removing material.

15. As we show further below, Facebook did not act expeditiously in taking down the infringing material posted by the Dorset Defendants on Facebook's web site. Accordingly, Facebook is liable to Dr. Long for damages under the various theories of liability identified below.

Dr. Long's Creation and Use of His Valuable Copyrighted Materials

16. Plaintiff Dr. Long is an internationally renowned expert on yoga and in particular the anatomical purposes and effects of yoga poses. He is

1 one of the bestselling authors of yoga books, a frequent author of articles for
2 yoga publications, a producer of video training materials and a frequent
3 lecturer on yoga topics.

5 17. Dr. Long has developed his yoga expertise and reputation over
6
7 the course of more than 20 years.

8 18. Dr. Long owns the copyrights to the internationally known brand
9
10 Bandha Yoga directly or through Bandha LLC, which holds exclusive rights
11 to its related publications, including books (in print and e-books), articles,
12 pamphlets, videos, pictures, animations, and other interactive media.

14 19. The infringing material in this case is in the form of illustrations
15 and texts that come primarily from some of his copyrighted books:

(a) *The Key Poses of Yoga: Scientific Keys, Volume II* (U.S.

Copyright Registration No. TX 7-473-344, effective January 11, 2012);

(b) *Yoga Mat Companion 1: Anatomy for Vinyasa Flow and*

Standing Poses (U.S. Copyright Registration No. TX 7-474-337, effective January 11, 2012);

(c) *Yoga Mat Companion 2: Anatomy for Hip Openers and*

Forward Bends (U.S. Copyright Registration No. TX 7-473-350, effective January 11, 2012);

1 (d) *Yoga Mat Companion 3: Anatomy for Backbends and Twists*

2 (U.S. Copyright Registration No. TX 7-474-356, effective

3 January 11, 2012); and

4 (e) *Yoga Mat Companion 4: Anatomy for Arm Balances and*

5 *Inversions* (U.S. Copyright Registration No. TX 7-474-352,

6 effective January 11, 2012).

7 20. Among the Plaintiffs' copyrights and infringed intellectual

8 property are anatomical illustrations showing the muscular/skeletal effect of
9 various yoga poses, referred to as the "Scientific Keys to Unlock the Practice
10 of Yoga" (the "Scientific Keys Illustrations").

11 21. Some of the Scientific Keys Illustrations are digitally rendered,

12 while others are hand-drawn. They are produced through trade secret

13 means to ensure anatomical accuracy generally unobtainable through other
14 means; the resulting images are unique, highly recognizable, sought after,
15 and readily identifiable as the product of Dr. Long and his businesses.

16 22. All of the Scientific Keys Illustrations are produced exclusively

17 by or for Dr. Long under his direction. The digital Scientific Keys

18 Illustrations are produced in collaboration with an employee. The

19 employee—assistant's contract with Dr. Long grants Dr. Long exclusive

20 intellectual property rights to all of the aforesaid collaborative illustrations.

1 23. Dr. Long carefully manages the use of the Scientific Keys
2 Illustrations to maximize their value for marketing his revenue-producing
3 business.

5 24. Among the Plaintiffs' copyrighted and infringed intellectual
6 property is text, of which Dr. Long is the sole author and copyright holder.
7

8 25. Dr. Long markets his intellectual property with a carefully
9 designed and curated internet presence. In May of 2015, the Bandha Yoga
10 page had approximately 400,000 followers on Facebook.
11

12 26. Dr. Long's blog, Daily Bandha, has over seven million page
13 views, and his YouTube videos have been viewed approximately 800,000
14 times.
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16 27. As with all owners of the copyrights, Plaintiffs possess the
17 exclusive right to reproduce such copyrighted works in digital or print
18 formats, to distribute such copyrighted works to the public by means of
19 digital or other transmission, and to license those rights over the internet.
20

22 28. As part of Plaintiffs' marketing plan, they established a business
23 page on Facebook called "Bandha Yoga – The Scientific Keys" (the "Bandha
24 Yoga page").
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26 29. Although the establishment of a business page is free, Facebook
27 generates substantial revenue each year by encouraging businesses to
28

1 establish a business page and then to advertise on Facebook to drive users
2 to that page.
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4 30. Business page users may use their business page to advertise
5 their products, upload and maintain information, and disseminate original
6 content to users drawn to their business page.
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8 31. Facebook users who engage with Facebook business pages may
9 view content uploaded by the business page administrator(s), interact with
10 the business by “liking”, commenting, and sharing the business page’s posts,
11 providing their own opinions and reviews, and sharing and disseminating
12 opinions or advertising about such pages or products to their own network of
13 Facebook connections.
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15 32. Business pages, including the Bandha Yoga page, have
16 password-protected administrative access.
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18 33. Facebook makes special analytical tools available so that
19 business page users can see how many times a post has been “liked,” or how
20 many times the post or page has been viewed (called “impressions”), or how
21 many different individuals have viewed a post (called “reach”). Facebook
22 business page users then can advertise through Facebook and can see
23 analytics of the number of individuals who saw a post as a result of the
24 advertisement (called “paid reach”).
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1 34. Plaintiffs paid Facebook tens of thousands of dollars to advertise
2 the Bandha Yoga Page and to otherwise use Facebook's services to expand
3 the Bandha Yoga brand. On information and belief, the users drawn to
4 Facebook by the Bandha Yoga page provide Facebook with the ability to
5 charge higher advertising rates to its advertisers.

6 35. Paid Facebook business pages present unique risks of
7 misappropriation of copyrighted materials and other misuse of data when
8 those pages are hacked and the hackers assume administrative control of
9 those pages.

10 36. Facebook's Terms of Service, Section 1, entitled "Our Services,"
11 states that one of their services is to "[c]ombat harmful conduct and protect
12 and support our community: We employ dedicated teams around the world
13 and develop advanced technical systems to detect misuse of our Products,
14 harmful conduct towards [sic] others, and situations where we may able to
15 help support or protect our community. If we learn of content or conduct like
16 this, we will take appropriate action – for example, offering help, removing
17 content, blocking access to certain features, disabling an account, or
18 contacting law enforcement. We share data with other Facebook Companies
19 when we detect misuse or harmful conduct by someone using one of our
20 Products."

1 37. Facebook did not take appropriate precautions to prevent or
2 curtail the misuse that occurred in this case and led to Plaintiffs' damages.
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4 **The Hacking of the Bandha Yoga Page by the Dorset Defendants**
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6 38. The Dorset Defendants are computer hackers operating through
7 fictitious addresses.

8 39. Their criminal acts were accomplished by their unauthorized
9 hijacking and unlawful control of the Bandha Yoga page, which they used to
10 engage in the intentional, repeated, and unlawful misuse of Plaintiffs'
11 copyright-protected intellectual property, including the Scientific Key
12 Illustrations and text.

13 40. When a user clicked on the copyrighted material, they would be
14 redirected to a website that closely resembled Dr. Long's blog (created by
15 further infringing his copyrighted materials) except that its margins were
16 littered with pornographic advertisements; malicious malware would be
17 installed on the user's device, or if they had certain antivirus protections,
18 they would receive a warning that the website was attempting to install
19 such malware.

20 41. Each Dorset Defendant acted as a primary violator of the
21 statutes in question and a primary tortfeasor in committing the torts in
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question; alternatively, each Dorset Defendant acted in agreement and conspiracy with the primary violators and/or tortfeasors.

42. On or about the Sunday of the Memorial Day Weekend, May 24, 2015, the Bandha Yoga page was accessed by an unauthorized user by the pseudonym Tammy Dorset; on information and belief, the actions of Defendants Tammy Dorset were taken in conspiracy with Defendants John Does 1-10.

43. Tammy Dorset hacked the Bandha Yoga page and changed the administrative passwords and established himself/herself as the page administrator. Tammy Dorset therefore prevented Dr. Long and his employees from accessing and controlling the Bandha Yoga page.

44. On information and belief, Tammy Dorset was able to hack and control the Bandha Yoga page only because of an internal security lapse at Facebook.

Dr. Long Notifies Facebook of the Dorset Defendants Posting of Material Infringing on Dr. Long's Copyright and Demands That Those Materials be Taken Down.

45. On May 24, 2015, Dr. Long notified Facebook through the Facebook online reporting form and a series of emails, using the email address to which the Bandha Yoga page was registered (rayalongmd@yahoo.com), that: (1) Dr. Long is/was the rightful owner of the

1 Bandha Yoga page, (2) that the Bandha Yoga page had been hacked, and (3)
2 that copyright-infringing materials were being posted on the Bandha Yoga
3 page by an unauthorized hacker. Dr. Long requested information from
4 Facebook on how to proceed.
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6 46. On information and belief, a nonhuman robot responded on
7 behalf of Facebook the same day, indicating in boilerplate language that
8 Facebook had received his emails, was investigating the incident, and would
9 contact Tammy Dorset.

10 47. Facebook also instructed Dr. Long to lodge his infringement
11 complaints at an email address established by Facebook to allow owners of
12 intellectual property to inform Facebook of copyright infringement:
13 ip@fb.com. Following a link on that page, Dr. Long went to that page and
14 filled out a form (the “IP Form”) advising Facebook of the infringement, and
15 further advising them that his complaint should be viewed as a “take down
16 notice” under Section 512 of the DMCA. The form did not have a place to
17 identify which of the various sub-sections of Section 512 was sought to be
18 invoked. On information and belief, Facebook treated all such notices as
19 potentially effective without that information. As pointed further below,
20 Dr. Long repeatedly filled out multiple Facebook IP Forms and received
21 confirmations of filings in each instance.
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1 48. Multiple times on Memorial Day, Monday, May 25, 2015, Dr.
2 Long notified Facebook via ip@fb.com and through Facebook's online
3 reporting forms that the Bandha Yoga page had been hacked and that the
4 unauthorized user was continuing to publicly disseminate Plaintiffs'
5 copyrighted material.
6

7 49. The subject line of the emails Dr. Long sent on May 25, 2015,
8 was "copyright infringement"; the body of the email stated, "[t]his letter is
9 official notification under Section 512(c) of the Digital Millennium Copyright
10 Act (the "DMCA"), and I seek removal of the aforementioned infringing
11 materials from your servers."
12

13 50. The copyrighted materials appeared on Facebook in the form of
14 links containing copyrighted illustrations and written text which purported
15 to direct the user to Dr. Long's Bandha Yoga blog. Tammy Dorset placed
16 these copyrighted materials on Dr. Long's business page in order to mislead
17 visitors. The images linked users to a site that installed malware on a
18 user's computer.
19

20 51. Multiple Facebook users commented on the Bandha Yoga page
21 and on the infringing posts, warning other users that the Bandha Yoga page
22 had been hacked, that the person in charge of the page was not the Bandha
23 Yoga page's authorized administrator, and that clicking on the posted
24

1 images/text would result in installation of malicious malware. Tammy
2 Dorset swiftly deleted all of these comments as they were posted.
3

4 52. Dr. Long communicated with Facebook on May 25, 2015 using
5 the email account that also serves as the email account of record for the
6 Bandha Yoga page. In his communications, Dr. Long provided proof that he
7 owned the copyrighted materials and the page, together with a notarized
8 copy of his United States passport to prove that the notices were being sent
9 by him.

10 53. Dr. Long's notices to Facebook on May 25, 2015 and afterward
11 fully complied, or, in the alternative substantially complied, with the
12 requirements for a takedown notice under the DMCA.

13 54. On Memorial Day, May 25, 2015 at 12:28 a.m., Facebook
14 responded to Dr. Long with a message stating: "We reviewed the profile you
15 reported pretending to be you and found that it doesn't violate our
16 Community Standards."

17 55. The most significant fact established by that message is the
18 precise time at which Facebook had "reviewed" Dr. Long's DCMA take down
19 notices. By acknowledging receipt of his communications, Facebook
20 acknowledged it was aware of the contents of Dr. Long's DMCA take down
21 notices and his easily verified description of the hacking by the Dorset
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1 Defendants and their takeover of administrative control of the Bandha Yoga
 2 Facebook page.
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4 56. Additionally, it is indisputable that the Dorset Defendants
 5 conduct did violate Facebook's Terms of Service. Facebook's Terms of
 6 Service ("TOS") contain specific prohibitions including prohibitions on
 7 a)hosting content or taking any action on Facebook that infringes or violates
 8 someone else's right or otherwise violates the law (TOS §5.1); b)accessing
 9 accounts belonging to others (TOS §3.4); c) using Facebook to do anything
 10 unlawful, misleading, malicious, or discriminatory (TOS §3.9); d) providing
 11 false information to Facebook or creating an account for anyone other than
 12 oneself without permission (TOS §4.1); and c)posting links to malware (TOS
 13 §3.4).60. Facebook's conclusion that the account did not violate its own
 14 Community Standards was , not explained and is inexplicable.

15 57. Facebook had actual knowledge from Dr. Long that the Bandha
 16 Yoga page had been hacked, that he had been impermissibly removed as
 17 administrator, and that his intellectual property was being infringed.

18 FACEBOOK COULD HAVE IDENTIFIED AND TAKEN DOWN ALL
 19 INFRINGING MATERIAL ON MAY 25, 2015.

1 58. On information and belief, Facebook's computers responsible for
2 identifying and removing copyright infringing material operate 7 days a
3 week, 24 hours a day.

5 59. On information and belief, Facebook could have and should have
6 taken down the material infringing Dr. Long's copyrights within a few hours
7 of 12:28 a.m. May 25, 2015 or at the very latest the first thing at the start of
8 Facebook's business day on May 25, 2015. The information that Plaintiffs
9 have to support that allegation include:

12 a. On information and belief, Facebook was easily and almost
13 instantly able to identify all of the infringing material posted by the Dorset
14 Defendants. Facebook was aware from Dr. Long's DMCA notices that
15 everything the Dorset Defendants posted on Dr. Long's Bandha Yoga
16 Facebook page was copyrighted by Dr. Long and all that material infringed
17 on Dr. Long's copyrights. Unknown to Dr. Long, but known to Facebook,
18 Facebook's computer system kept track of all of the material posted on one
19 of their pages. Indeed, software that allows identification of "new" material
20 posted onto a web site after a specific date is commonly available and used
21 by web site aggregators to "scrape" "new" materials from web sites and post
22 those new materials on the aggregator's web site.
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1 b. Therefore, on information and belief Facebook was able to use
2 their programs to identify all of the materials posted to the Bandha Yoga
3 Facebook page after the moment the Dorset Defendants assumed
4 administrative control of the Bandha Yoga Facebook page.
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6 c. On information and belief, Facebook was easily and almost
7 instantly able to remove all of the infringing material posted by the Dorset
8 Defendants and effectively “roll back” the contents of the site to the
9 condition it was in immediately prior to the assumption of administrative
10 control by the Dorset Defendants. That allegation is supported by the fact
11 that on June 2, 2015, Facebook, or nine (9) days after receiving the DMCA
12 take down notice and information that the hackers had used FB to engage in
13 copyright infringement, removed Tammy Dorset as the administrator of the
14 Bandha Yoga page, and effectively instantly removed all posts posted by
15 Tammy Dorset, which also removed all of the infringing material that had
16 been posted to the Bandha Yoga page. Once Dr. Long was re-installed in
17 administrative control, and the Dorset posted content had been removed,
18 any remaining material on the Bandha Yoga Facebook page remained there
19 with Dr. Long’s consent.

20 d. On information and belief, there was no technological reason nor
21 any manpower limitation that interfered with the ability of Facebook to take
22

1 on May 25, 2015, the same actions it took over a week later on June 2, 2015.
2 The only reason that Facebook did not act sooner is because Facebook acting
3 through its computerized algorithms intentionally chose not to identify Dr.
4 Long's complaints as a "take down" notice which by law required
5 "expeditious" action, and instead treated the complaints as a "page
6 administration" dispute which did not require "expeditious" action.
7

8 e. In addition, even if, contrary to fact, Facebook did not have the
9 ability to roll back the Bandha Yoga Facebook page, with each of his DCMA
10 notices, Dr. Long had specifically identified the infringing images and
11 supplied a link to his blog showing the "source" of the improperly copied
12 infringing material. Facebook did not require any human review of the
13 pictures and text on the Bandha Yoga Facebook page to identify infringing
14 materials. Neural network and Artificial intelligence software exists that
15 allow computers to identify images and text and to determine potential
16 infringement. See, <https://www.cashmanip.com/neural-network-image-copyright> (last viewed 6/29/2021). On information belief on May 25, 2015
17 Facebook had and used similar software to allow computer identification of
18 infringing images or text. The use of that software would have allowed
19 identification and removal on May 25, 2015, of the images and text that the
20 Dorset Defendants posted on the Bandha Yoga Facebook page.
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f. Reported cases, other publicly reported information, and Dr. Long's personal experiences show that other ISPs routinely remove infringing materials within hours, and certainly less than 24 hours after infringement.

g. On information and belief, had Facebook chosen to remove the material infringing Dr. Long's copyrights on May 25, 205, it easily could have done so.

Dr. Long's Repeated Attempts to Have Facebook Remove Infringing Materials Over the Next Eight Days.

60. On May 25, 2015, Dr. Long sent additional DMCA takedown notices at 12:33 a.m. and 9:36 p.m.

61. Facebook, through an apparent automated responder, provided Dr. Long with a form to report intellectual property infringement. Dr. Long completed and submitted form on the same day. However, Facebook responded to Dr. Long by stating that it was a “page admin issue” and that Facebook was “unable to assist [him] with [his] request from this contact channel.”

62. Facebook's automated responder was apparently unable to recognize that the page administration issue and copyright infringement issue were inextricably intertwined: even if existing infringing material

were removed from the Bandha Yoga page, Tammy Dorset would continue to post new infringing material within the following hours as long as Tammy Dorset retained control of the page.

63. Tammy Dorset posted new infringing material repeatedly throughout the nine (9) day time period (May 24, 2015 to June 2, 2015) that he/she/they controlled the Bandha Yoga page.

64. A small sample of the Dr. Long's copyrighted material that was infringed can be found at the following URLs to Dr. Long's blog:

- (a) <http://www.dailybandha.com/2011/07/balancing-freedom-and-restraint-in-yoga.html>
- (b) <http://www.dailybandha.com/2011/07/using-tfl-to-refine-utthita.html>
- (c) <http://www.dailybandha.com/2011/05/shoulder-kinematics-in-yoga-part-ii.html>
- (d) <http://www.dailybandha.com/2011/03/how-to-use-adductor-muscles-to-refine.html>
- (e) <http://www.dailybandha.com/2011/04/shoulder-kinematics-in-yoga.html>

65. Despite this ongoing and continuous conduct, and despite Dr. Long's notifications, over the course of nine (9) days Facebook failed to

1 expeditiously remove or block access to the infringing material. Facebook
2 also failed to take reasonable action to terminate Tammy Dorset's control of
3 the Bandha Yoga page.
4

5 **Dr. Long's Subsequent Notices to Facebook Eventually Lead to the Removal
6 of Tammy Dorset as Page Administrator and Simultaneously to the
7 Removal of the Infringing Material**

8 66. Facebook did not remove the infringing material after being
9 made aware of the infringements by Dr. Long's DMCA-compliant notices;
10 instead, the eventual removal of Tammy Dorset as page administrator
11 removed the infringing material from the page itself.
12

13 67. On May 26, 2015, the infringing material still appeared on the
14 Bandha Yoga page and Tammy Dorset was still posting new infringing
15 material, which would direct users to installation of malicious malware,
16 almost hourly.
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18 68. On May 26, 2015, Dr. Long sent Facebook several additional
19 DMCA takedown notices which stated that copyright-protected material was
20 still being displayed and distributed on the hacked Bandha Yoga page.
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22 69. On May 26, 2015, Facebook's automated responder replied to Dr.
23 Long, indicating that it believed that Dr. Long's copyright complaint was
24 actually a page administration issue, and claimed to have forwarded his
25 message to their page administration team. Facebook's automated
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1 responder therefore miscategorized Dr. Long's copyright issue as a page
2 administration issue.
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4 70. Later in the day on May 26, 2015, Facebook responded with two
5 messages (the "Evening May 26, 2015 messages") acknowledging that Dr.
6 Long's previous messages concerned both intellectual property issues and
7 page administration issues; Facebook asked which issue Dr. Long wanted to
8 address first.
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10 71. One Evening May 26, 2015 message was signed "Flo" and the
11 other was signed "Damian."
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13 72. On information and belief, neither a person named Flo nor a
14 person named Damian personally reviewed Dr. Long's notices; those
15 messages were generated and sent by Facebook's automated responders.
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17 73. If Facebook treated Dr. Long's infringement complaint as a
18 matter requiring "expeditious" action, which on information and belief it did
19 not, if not done sooner (as it should have been), on May 26 Facebook could
20 have and would have taken down all posts on the Bandha Yoga Facebook
21 page posted by the Dorset Defendants."

22 74. On Tuesday, May 27, 2015 at 8:11 a.m., Dr. Long responded to
23 Flo with a detailed explanation of the problem, and again sent DMCA
24 takedown notices demanding that Facebook remove the infringing material,
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1 underscoring the need for prompt action, reiterating that the hacker was
 2 linking Facebook posts containing Plaintiffs' copyrighted images and texts
 3 to destructive malware, and requesting that Facebook involve law
 4 enforcement.
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6 75. Facebook still did not remove the infringing material. If
 7 Facebook treated Dr. Long's infringement complaint as a matter requiring
 8 "expeditious" action, which on information and belief it did not, if not done
 9 sooner (as it should have been), on May 26 Facebook could have and would
 10 have taken down all posts on the Bandha Yoga Facebook page posted by the
 11 Dorset Defendants."

12 76. Because the Evening May 26, 2015 messages had been signed
 13 with human names ("Flo" and "Damian"), Dr. Long mistakenly but
 14 reasonably thought that his communications were being addressed by
 15 humans, and he became increasingly frustrated that Facebook did not
 16 appear to understand his messages.

17 77. On Tuesday, May 27, 2015 at 9:52 a.m., Dr. Long sent another
 18 DMCA takedown notice to the general Facebook intellectual property
 19 address, copying "Flo" and "Damian" and "Wyatt" on the email.

20 78. On May 27, 2015 at 1:39 p.m., a message from Facebook, signed
 21 by "Lulu", inquired how Tammy Dorset got access to the page, to which Dr.

1 Long responded that he did not know Tammy Dorset and sent a notarized
2 declaration that he was the owner of the Bandha Yoga page. Both “Lulu”
3 and “Flo” then ceased communicating with Dr. Long, although Dr. Long
4 copied them on all of his subsequent emails.
5

6 79. Although it had proper DMCA take down information for over
7 three (3) “internet business days,” on information and belief, Facebook made
8 no efforts to remove, nor stop the continued posting of, the infringing
9 material.
10

12 80. If Facebook treated Dr. Long’s infringement complaint as a
13 matter requiring “expeditious” action, which on information and belief it did
14 not, if not done sooner (as it should have been), on May 27 Facebook could
15 have and would have taken down all posts on the Bandha Yoga Facebook
16 page posted by the Dorset Defendants.”
17

19 81. On May 28, 2015, Dr. Long sent additional DMCA notices to
20 Facebook by its online reporting form, email and fax. “If Facebook treated
21 Dr. Long’s infringement complaint as a matter requiring “expeditious”
22 action, which on information and belief it did not, if not done sooner (as it
23 should have been), on May 28 Facebook could have and would have taken
24 down all posts on the Bandha Yoga Facebook page posted by the Dorset
25 Defendants.”
26
27
28

1 82. On May 29, 2015, or five (5) “internet business days” after
2 Facebook received proper DMCA take down notices, the Bandha Yoga page
3 remained under Tammy Dorset’s control and he/she/they continued the
4 infringing activities by posting new infringing material on an hourly basis.
5

6 83. Rather, on May 29, 2015, Facebook replied to Dr. Long’s
7 continued takedown notices with yet another series of emails.

8 84. “Damian,” who appeared to be an automated responder,
9 responded in the same boilerplate manner that “Flo” had responded days
10 earlier, indicating that despite receiving multiple DMCA takedown notices
11 from Dr. Long, Facebook still erroneously believed that Dr. Long was
12 attempting to make a page administration claim, and that Facebook could
13 not act on the infringement claim if Dr. Long wanted to complain about the
14 hacking of the Bandha Yoga page.

15 85. On May 29, 2015, Dr. Long responded to “Damian,” stating: “I’m
16 definitely making an intellectual property claim. That is why I have sent
17 multiple DMCA notices.”

18 86. Dr. Long also repeated that the hacker was using Plaintiffs’
19 copyrighted images and text to entice his business contacts and prospective
20 business contacts to click on the links, which would then redirect the user to
21 installation of harmful malware.

1 87. If Facebook treated Dr. Long's infringement complaint as a
2 matter requiring "expeditious" action, which on information and belief it did
3 not, if not done sooner (as it should have been), on May 29 Facebook could
4 have and would have taken down all posts on the Bandha Yoga Facebook
5 page posted by the Dorset Defendants."

6 88. On May 30, 2015, or six (6) "internet business days" after the
7 initial and fully proper DMCA take-down notices, Dr. Long provided still
8 more DMCA notices to Facebook. "If Facebook treated Dr. Long's
9 infringement complaint as a matter requiring "expeditious" action, which on
10 information and belief it did not, if not done sooner (as it should have been)
11 on May 30 Facebook could have and would have taken down all posts on the
12 Bandha Yoga Facebook page posted by the Dorset Defendants."

13 89. On June 1, 2015, or seven (7) "internet business days after the
14 initial DMCA take-down notices, Facebook responded that it was seeking
15 further details and requested that Dr. Long resubmit his previous DMCA
16 notices, which included links to the infringing material, which Dr. Long had
17 done on his previous DMCA notices. "If Facebook treated Dr. Long's
18 infringement complaint as a matter requiring "expeditious" action, which on
19 information and belief it did not, if not done sooner (as it should have been)
20

1 on June 1 Facebook could have and would have taken down all posts on the
2 Bandha Yoga Facebook page posted by the Dorset Defendants.”
3

4 90. On June 2, 2015, eight (8) “internet business” days after the
5 hacking first occurred, Facebook removed Tammy Dorset as the
6 administrator of the Bandha Yoga page, and removed all posts posted by
7 Tammy Dorset, which also removed all of the infringing material that had
8 been posted to the Bandha Yoga page over the previous eight days.
9

10 91. The infringing material was removed eight (8) “internet business
11 days” after Dr. Long started issuing his series of takedown notices.
12

13 92. On information and belief, that action was taken based on
14 Facebook’s procedures for dealing with page administration complaints, and
15 not because of reported copyright infringement. .
16

17 93. Facebook also failed to timely restore Dr. Long’s administrative
18 control over the Bandha Yoga page, which would have allowed Dr. Long to
19 promptly remove the offending content himself.
20

21 94. During the period where the Dorset Defendants controlled the
22 Bandha Yoga page, over 3.5 million existing and/or prospective clients of Dr.
23 Long and/or Bandha Yoga accessed the improperly posted infringing
24 materials and were exposed to malware, or, if their computer was protected
25
26
27
28

by antivirus software, to warnings that the page was attempting to damage their device with malware.

95. The hacking by the Dorset Defendants and Facebook's failure to act expeditiously to return control of the Bandha Yoga page to Dr. Long and to remove the infringing materials, severely undermined Plaintiffs' relationships with existing and prospective customers.

Facebook's Wrongful Handling of Plaintiffs' Copyright Infringement Notices

96. At all relevant times, Facebook had actual knowledge that Tammy Dorset had displaced Dr. Long as the Bandha Yoga page administrator without his authorization and in violation of Facebook's Terms of Service.

97. At all relevant times, Facebook had actual knowledge that the Bandha Yoga page had been established by Dr. Long and administered by Dr. Long.

98. At all relevant times, Facebook was engaged in a transactional business relationship with Plaintiffs, by virtue of Plaintiffs paying Facebook in exchange for Facebook's targeted promotion and advertising of the Bandha Yoga page to Facebook users.

1 99. This transactional business relationship imbues Facebook with a
2 duty of care with respect to business pages, to maintain adequate internal
3 cyber security systems and mechanisms to prevent unauthorized access and
4 copyright infringements, or, alternatively, to expeditiously stop
5 unauthorized access and restore proper page administration, and to
6 expeditiously remove copyright-infringing material.

7 100. Facebook breached its aforesaid duty of care to Plaintiffs.

8 101. Facebook failed to maintain adequate internal cyber security
9 systems and mechanisms to prevent unauthorized access and copyright
10 infringements, in that a security breach at Facebook directly and
11 proximately caused the Dorset Defendants to gain unauthorized access to
12 the Bandha Yoga page and to post dozens of copyright-infringing images and
13 texts.

14 102. Facebook failed to expeditiously stop the Dorset Defendants'
15 unauthorized access and restore proper page administration, in that Dr.
16 Long followed Facebook's own internal guidelines to notify Facebook of the
17 hacking and copyright infringements several dozen times and Facebook
18 failed to stop the unauthorized access and restore proper page
19 administration for eight days, all of which were "business days," as the
20 internet is "open" 24/7, 365 days a year.

103. 104. In addition to following Facebook's internal reporting procedures, Dr. Long diligently notified Facebook of the hacking and copyright infringements dozens of times through every avenue he could think of: through email, facsimile, and FedEx overnight mail, with and without notarized proof of his identity and ownership of the Bandha Yoga page.

104. During the eight days that he was locked out of the Bandha Yoga page, a business page for which he pays for targeted promotion and advertising, Dr. Long was repeatedly directed to non-human automated responders, which he believed to be human, and otherwise effectively ignored by employees at Facebook who could have properly recognized the problems and expeditiously solved them.

105. But for Facebook's failure to maintain adequate internal cyber security systems and mechanisms to prevent and rectify unauthorized access and copyright infringements, Plaintiffs' existing and prospective business relationships would not have been damaged.

AS AND FOR A FIRST CLAIM FOR RELIEF¹

¹ While the Court's order only allows amendment of certain Causes of Action, Plaintiffs respectfully have preserved all previously pleaded Causes of Action so as to avoid waiver and permit Plaintiffs to argue that such Causes of Action should be preserved, either before this Court, or before the Ninth Circuit or if necessary on a Petition for a Writ of Certiorari before the United States Supreme Court.

Copyright Infringement, Against All Defendants

106. Plaintiffs repeat and re-allege each and every allegation in the foregoing paragraphs as if fully alleged herein.

107. Defendants have infringed Dr. Long's copyrights in the Bandha Yoga page by reproducing and distributing the copyrighted words without authorization, in violation of the Copyright Act, 17 U.S.C. §§ 106 and 501.

108. Defendants' acts of infringement were willful and in disregard
of, and/or with indifference to, Plaintiffs' rights.

109. As a direct and proximate cause of Defendants' infringements, Plaintiffs are entitled to damages in an amount to be proven at trial and to Defendants' profits in amounts to be proven at trial, which are not currently ascertainable.

110. Alternatively, Plaintiffs are entitled to the maximum statutory damages of \$150,000 per copyright infringement, or in such other amount as may be proper under 17 U.S.C. §504(c), in an amount to be proven at trial. Plaintiffs are thusly entitled because Defendants' infringements were willful and continued.

111. Plaintiffs are further entitled to attorneys' fees and full costs pursuant to 17 U.S.C. §505.

AS AND FOR A SECOND CLAIM FOR RELIEF

Contributory Copyright Infringement, Against All Defendants

112. Plaintiffs repeat and re-allege each and every allegation in the foregoing paragraphs as if fully alleged herein.

113. Defendants have infringed Plaintiffs' copyrights in the Bandha Yoga materials, including Dr. Long's exclusive rights of reproduction, adaptation, and distribution by means of digital distribution through Facebook, in violation of 17 U.S.C. §§ 106 and 501.

114. On information and belief, because the Bandha Yoga Page was hacked, an authorized user or users disseminated Plaintiffs' copyrighted material tainted with the hackers' malware, exposing millions of users to both the aforesaid infringing content and malware.

115. The Dorset Defendants have each knowingly and materially contributed to unauthorized reproductions, adaptations, and distribution of the copyrighted works by unauthorized users, and have each contributed to, or caused, the infringement of Plaintiff's copyrights.

116. Facebook knowingly and materially contributed to unauthorized reproductions, adaptations, and distribution of the copyrighted works by unauthorized users, have contributed to, or caused, the infringement of Plaintiff's copyrights.

117. All Defendants' acts of infringement were willful, in disregard of, and with indifference to, Plaintiffs' rights.

118. As a direct and proximate result of the infringements by Defendants, Plaintiffs are entitled to damages in an amount to be proven at trial and to Defendants' profits in amount to be proven at trial, which are not currently ascertainable.

119. Alternatively, Plaintiffs are entitled to the maximum statutory damages of \$150,000 for each copyright infringed, or in such other amount as may be property under 17 U.S.C. §504(c), in an amount to be proven at trial. Plaintiffs are thusly entitled because Defendants' acts of infringement were willful.

120. Plaintiffs are further entitled to attorneys' fees and full costs pursuant to 17 U.S.C. §505.

AS AND FOR A THIRD CLAIM FOR RELIEF

Vicarious Copyright Infringement, Against All Defendants

121. Plaintiffs repeat and re-allege each and every allegation in the foregoing paragraphs as if fully alleged herein .

122. The Dorset Defendants have infringed Plaintiffs' copyrights in the Bandha Yoga materials, including reproduction, adaptation, and distribution of such infringing materials.

1 123. Facebook's failure to act to prevent continued infringement after
2 receiving notice of the direct infringement by the Dorset Defendants, and
3 Facebook's continued reproduction, adaptation, and distribution of the
4 infringing materials on its servers violate Plaintiffs' exclusive rights of
5 reproduction, adaptation, and distribution by means of digital distribution
6 through Facebook, violated 17 U.S.C. §§ 106 and 501.

7 124. All Defendants have knowingly and materially contributed to
8 unauthorized reproductions, adaptations, and distribution of the
9 copyrighted works; Facebook so contributed to the infringement of Plaintiffs'
10 copyrights by failing and refusing to expeditiously limit, prevent, remove, or
11 curtail such infringing activity despite Dr. Long's repeated notices.

12 125. Facebook refused or was unable to timely restore administrative
13 access to Dr. Long after his repeated notices of the hacking, thereby
14 interfering with Plaintiffs' ability to take necessary measures to remove the
15 infringing material.

16 126. On information and belief, the Dorset Defendants derived a
17 direct financial benefit from this infringement, including, but not limited to,
18 advertising, other revenue, or other financial benefits from the increased
19 user traffic arising from the "draw" of Plaintiffs' copyrighted materials.

127. The Defendants' acts of infringement were willful and in disregard of, and with indifference to, Plaintiffs' rights.

128. As a direct and proximate result of the infringements by the Dorset Defendants, Plaintiffs are entitled to damages in an amount to be proven at trial and to Defendants' profits in amounts to be proven at trial, which are not currently ascertainable.

129. Alternatively, Plaintiffs are entitled to the maximum statutory damages of \$150,000 for each copyright infringed, or in such other amount as may be proper under 17 U.S.C. §504(c), in an amount to be proven at trial. Plaintiffs are thusly entitled because Defendants' acts of infringement were willful and continued.

130. Plaintiffs are further entitled to attorneys' fees and full costs pursuant to 17 U.S.C. §505.

AS AND FOR A FOURTH CLAIM FOR RELIEF Violation of the Computer Fraud and Abuse Act (CFAA), Against the Dorset Defendants

131. Plaintiffs repeat and re-allege each and every allegation in the foregoing paragraphs as if fully alleged herein Paragraphs 1 – X are hereby realleged.

132. The Dorset Defendants knowingly caused the transmission of a program, information, code, or command, and as a result of such conduct,

1 intentionally caused damage without authorization to one or more protected
2 computers in violation of 18 U.S.C. §1030(a)(4).
3

4 133. At all relevant times, the Facebook servers hosting the Bandha
5 Yoga Page were protected computers pursuant to 18 U.S.C. §1030(e)(2)(B).
6

7 134. Beginning on or about May 24, 2015, and ending on or about
8 June 3, 2015, the Dorset Defendants intentionally accessed the Facebook
9 server(s) hosting the Bandha Yoga Page without authorization, or exceeding
10 authorized access, and thereby obtained information in violation of 18
11 U.S.C. §1030(a)(2).
12

13 135. In violation of 18 U.S.C. §1030(a)(4), the Dorset Defendants
14 obtained the aforesaid access knowingly, with intent to defraud; by means of
15 such conduct, they furthered the intended fraud by obtaining things of
16 value, including access to Plaintiffs' existing and prospective customers, the
17 use of Plaintiffs' copyrighted materials, and other value, in amounts to be
18 proven at trial.
19

20 136. As a result of the acts of the Dorset Defendants, Plaintiffs have
21 suffered damages in excess of \$5,000 within a one-year period, and on
22 information and belief, damages were caused to 10 or more protected
23 computers.
24

137. As a direct and proximate result of the Dorset Defendants' wrongful conduct, Plaintiffs have suffered losses, including: the cost of responding to the offense; conducting a damage assessment; restoring the data, program, system, or information to its condition prior to the offense; revenue losses; costs incurred; and other consequential damages incurred due to interruption of service.

138. Plaintiffs are entitled to economic damages pursuant to 18 U.S.C. §1030(g) in amounts to be proven at trial.

AS AND FOR A FIFTH CLAIM FOR RELIEF
Violation of the Stored Communications Act (SCA), Against the Dorset
Defendants

139. Plaintiffs repeat and re-allege each and every allegation in the foregoing paragraphs as if fully alleged herein .

140. Pursuant to 18 U.S.C. §2701(a), with certain exceptions not relevant here, it is unlawful to (1) intentionally access without authorization a facility through which an electronic communication service is provided; or (2) intentionally exceed an authorization to access that facility; and thereby obtain, alter, or prevent authorized access to a wire or electronic communication while it is in electronic storage in such system.

141. During the eight-day time frame in which Dr. Long was locked out of the Bandha Yoga page, the Dorset Defendants (1) continuously and

1 intentionally accessed the Bandha Yoga page, (2) continuously accessed and
2 removed comments made by users of the Bandha Yoga page which would
3 alert visitors to the fact that the page had been hacked, that the person in
4 charge of the page was not the Bandha Yoga page's authorized
5 administrator, Dr. Long, and that downloading images would result in the
6 installation of malware against the user's wishes.

7 142. During the eight-day time frame in which Dr. Long was locked
8 out of the Bandha Yoga page, the Dorset Defendants continuously and
9 intentionally obtained, and deleted or altered, electronic communications
10 stored on the Bandha Yoga page and prevented authorized access by Dr.
11 Long to electronic communications on that page.

12 143. The violations of the SCA by the Dorset Defendants were
13 committed with a knowing and intentional state of mind.

14 144. As a result of the foregoing, pursuant to 18 U.S.C. §2707,
15 Plaintiffs are entitled to the actual damages suffered by the Plaintiffs and
16 any profits made by the Dorset Defendants as a result of the violation, in
17 amounts to be proven at trial, in addition to reasonable costs and attorneys'
18 fees, and punitive damages against the Dorset Defendants.

19 145. In no case are Plaintiffs entitled to less than \$1,000 for each such
20 violation, the costs of the action, and reasonable attorneys' fees.

1 **AS AND FOR A SIXTH CLAIM FOR RELIEF**

2 **Violation of California Penal Code § 502, Against the Dorset Defendants**

3 146. Plaintiffs repeat and re-allege each and every allegation in the
4 foregoing paragraphs as if fully alleged herein.

5 147. In violation of California Penal Code §502(c), the Dorset
6 Defendants:

7 (1) Knowingly access and without permission altered,
8 damaged, deleted, destroyed, and otherwise used data, computer,
9 computer system, or computer network, in order to either (A)
10 devise or execute any scheme or artifice to defraud, deceive, or
11 extort, or (B) wrongfully control or obtain money, property, or
12 data;

13 (2) Knowingly and without permission used or caused to be
14 used computer services;

15 (3) Knowingly accessed and without permission added, altered,
16 damages, deleted, and destroyed data which resides or exists
17 internal or external to a computer, computer system, or computer
18 network;

19 (4) Knowingly and without permission disrupted or caused the
20 disruption of computer services or denied or caused the denial of
21

1 computer services to an authorized user of a computer, computer
2 system, or computer network;
3

4 (5) Knowingly introduced a computer contaminant into
5 computers, computer systems, or computer networks;

6 (6) Knowingly and without permission used the internet
7 domain name or profile of another individual, corporation, or
8 entity in connection with the sending of one or more electronic
9 mail messages or posts and thereby damaged or case damage to a
10 computer, computer data, computer system, or computer
11 network;

12 (7) Knowingly and without permission accessed or cased to be
13 accessed any computer, computer system, or computer network.

148. As a result of the foregoing, Plaintiffs have suffered losses
149 including the cost of responding to the offense, restoring the data, program,
20 system, or information to its condition prior to the offense, revenue lost, cost
21 incurred, and other consequential damages incurred because of interruption
22 of service.

25 149. Plaintiffs are entitled to damages pursuant to CA Penal Code
26 §502(e) in amounts to be proven at trial.
27

150. Plaintiffs are entitled to punitive damages against the Dorset Defendants because the Dorset Defendants have been guilty of oppression, fraud, or malice, as defined in CA Civil Code §3294(c).

AS AND FOR A SEVENTH CLAIM FOR RELIEF

Tortious Interference with Contractual Advantage, Against the Dorset Defendants

151. Plaintiffs repeat and re-allege each and every allegation in the foregoing paragraphs as if fully alleged herein.

152. Plaintiffs had valuable existing business relationships with many of the persons who visited the Bandha Yoga page during the period when the Dorset Defendants hijacked and controlled the Bandha Yoga page.

153. On information and belief, the Dorset Defendants were aware that those relationships existed, intended to disturb them, and did disturb Plaintiffs' then-existing relationships with some of those persons, which caused damage to Plaintiffs.

154. As a result of the foregoing, Plaintiffs are entitled to damages in amounts to be proven at trial.

AS AND FOR AN EIGHTH CLAIM FOR RELIEF

Tortious Interference with Prospective Advantage, Against the Dorset Defendants

155. Plaintiffs repeat and re-allege each and every allegation in the foregoing paragraphs as if fully alleged herein.

156. Plaintiffs had valuable potential business relationships with many of the persons who visited the Bandha Yoga page during the period when the Dorset Defendants hijacked and controlled the Bandha Yoga page.

157. On information and belief, the Dorset Defendants were aware of those prospective relationships, intended to disturb them, and did disturb Plaintiffs' then-existing relationships with some of those persons by using unlawful and otherwise improper means, causing damage to Plaintiffs.

158. As a result of the foregoing, Plaintiffs are entitled to damages in amounts to be proven at trial that are not currently ascertainable.

AS AND FOR A NINTH CLAIM FOR RELIEF

Conversion, Against the Dorset Defendants

159. Plaintiffs repeat and re-allege each and every allegation in the foregoing paragraphs as if fully alleged herein.

160. Plaintiffs had valuable property rights in the Bandha Yoga page and in Plaintiffs' intellectual property.

161. The Dorset Defendants used and disposed of Plaintiff's property in a manner inconsistent with Plaintiffs' property rights.

162. As a result of the foregoing, Plaintiffs are entitled to damages in amounts to be proven at trial that are not currently ascertainable.

AS AND FOR A TENTH CLAIM FOR RELIEF
Civil Conspiracy, Against the Dorset Defendants

163. Plaintiffs repeat and re-allege each and every allegation in the foregoing paragraphs as if fully alleged herein.

164. The Dorset Defendants formed and operated the conspiracy to commit copyright infringement and conversion; to violate the CFAA, the SCA, California Penal Code §502; and to tortuously interfere with Plaintiffs' contractual and prospective advantages.

165. The Dorset Defendants engaged in wrongful conduct in furtherance of the conspiracy.

166. Plaintiffs have suffered damages arising from the Dorset Defendants' wrongful conduct.

167. As a result of the foregoing, Plaintiffs are entitled to damages in amounts to be proven at trial that are not currently ascertainable.

AS AND FOR AN ELEVENTH CLAIM FOR RELIEF
Negligence, Against Facebook

168. Plaintiffs repeat and re-allege each and every allegation in the foregoing paragraphs as if fully alleged herein.

1 169. Facebook owes a duty of care to business pages that engage in a
2 transactional business relationship with Facebook by virtue of paying
3 Facebook for targeted advertising to users. Facebook's duty of care includes
4 maintaining adequate internal cyber security systems and mechanisms to
5 prevent hackers from obtaining control of Facebook business pages, or,
6 alternatively, to expeditiously stop unauthorized access and restore proper
7 page administration, and to expeditiously remove copyright-infringing
8 material.

12 170. Facebook breached its duty of care with respect to Plaintiffs by
13 enabling the Dorset Defendants to access the Bandha Yoga page without Dr.
14 Long's authorization, by failing to maintain properly programed automated
15 responders that can identify complaint categories and refer them to the
16 appropriate departments, and by failing to expeditiously restore proper page
17 administration and remove infringing material by taking eight days to do so,
18 despite dozens of notices from Dr. Long.

22 171. Plaintiffs' existing and prospective business relationships and
23 professional reputations have been irreparably harmed by association of the
24 Bandha Yoga page with malicious malware, to which approximately 3.5
25 million individual Facebook users may have been exposed.

172. As a direct and proximate result of Facebook's negligence, Plaintiffs are entitled to damages in an amount to be proven at trial that are not currently ascertainable.

**AS AND FOR A TWELFTH CLAIM FOR RELIEF Aiding and Abetting,
Against Facebook**

173. Plaintiffs repeat and re-allege each and every allegation in the foregoing paragraphs as if fully alleged herein .

174. Knowingly, or with willful blindness, Facebook substantially assisted the Dorset Defendants in committing the common law torts alleged against the Dorset Defendants, through their inaction.

175. As a result of the foregoing, Facebook is jointly and severally liable for damages caused by those torts, to the same extent as the Dorset Defendants.

**AS AND FOR A THIRTEENTH CLAIM FOR RELIEF
Breach of Contract, Against Facebook**

176. Plaintiffs repeat and re-allege each and every allegation in the foregoing paragraphs as if fully alleged herein.

177. Plaintiffs and Facebook entered into a contract wherein Plaintiffs paid Facebook for targeted promotion and advertising of the Bandha Yoga page. Facebook was obligated to comply with its own TOS, including the provision in Section 1, entitled “Our Services,” which provides that they

1 employ dedicated teams about the world and develop advanced technical
2 systems to detect misuse of their products, harmful conduct toward others,
3 and situations where they may be able to help support to protect their
4 community. The TOS provide that, if Facebook learns of content or conduct
5 like this, they will take appropriate action, such as offering help, removing
6 content, blocking access to certain features, disabling accounts, or contacting
7 law enforcement.
8
9

10 178. Plaintiffs paid Facebook the agreed-upon fee, complying with
11 their obligation under the contract.
12
13

14 179. Facebook failed to abide by its TOS. They had actual knowledge
15 of conduct entailing misuse of their products that was harmful to Plaintiffs,
16 but Facebook's eventual corrective actions were rendered inappropriate by
17 the ineffective automatic responders, failure to correctly direct Dr. Long's
18 complaints, failure to correctly identify the wrongful conduct, failure to
19 expeditiously remove or block access to infringing materials, and failure to
20 promptly restore Dr. Long as the Bandha Yoga page's administrator.
21
22

23 180. Plaintiffs were harmed and Facebook's breach of contract was a
24 substantial factor in causing said harm.
25
26
27
28

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:

181. As to FIRST, SECOND AND THIRD CLAIMS FOR RELIEF,
against all Defendants, for damages in an amount to be proven at trial and
Defendants' profits in amounts to be proven at trial, which are not currently
ascertainable. Alternatively, for statutory damages of \$150,000 per
copyright infringes or in such other amount as may be proper under 17
U.S.C. 504(c), an amount to be proven at trial, and in either event for costs
and reasonable attorneys' fees of this action;

182. As to the FOURTH CLAIM FOR RELIEF, against the Dorset Defendants, economic damages pursuant to the CFAA, in amounts to be proven at trial.

183. As to the FIFTH CLAIM FOR RELIEF, against the Dorset Defendants, actual damages suffered by Plaintiffs pursuant to the SCA, in amounts to be proven at trial, and reasonable costs, attorneys' fees, and punitive damages.

184. As to the SIXTH CLAIM FOR RELIEF, against the Dorset Defendants, for damages suffered by Plaintiffs in amounts to be proven at trial, reasonable costs and attorneys' fees, and punitive damages.

1 185. As to the SEVENTH, EIGHT, NINTH and TENTH CLAIMS
2 FOR RELIEF, against the Dorset Defendants, for damages suffered by
3 Plaintiffs in amounts to be proven at trial, and reasonable costs and
4 attorneys' fees.
5

6 186. As to the ELEVENTH, TWELFTH AND THIRTEENTH
7 CLAIMS FOR RELIEF, against Facebook, for damages in amounts to be
8 proven at trial.
9

10 187. Against all Defendants, for pre-judgment interest, costs, and for
11 such other and further relief as this Court deems just and appropriate.
12

13 Dated: New York, N.Y.

14 July 1, 2021

15 Respectfully Submitted,
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